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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
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6 FRED ZINSER, Case No. 3:18-cv-00090-MMD-WGC
7 Plaintiff, }
8 vs. }
9 SHANNON MOYLE, }
10 Defendant. }
11

12 **ORDER SETTING EARLY
13 MEDIATION CONFERENCE**

14 This case has been referred to the District Court's Inmate Early Mediation Program. The
15 Court will appoint a mediator in this case. The mediator will be an independent, neutral and
16 impartial attorney who is trained in mediation and who will assist the parties in attempting to
17 settle this case without further court action. Once a mediator is assigned to the case, the court
18 will notify the parties. The mediation conference will take place on **Tuesday, June 18, 2019,**
19 at **11:30 a.m.**, in Courtroom Number 2 in the United States Courthouse, Reno, Nevada. The
20 defendants are not required to serve or file an answer or other response to plaintiff's complaint
21 before the early mediation conference.

22 I. **AUTHORITY OF THE MEDIATOR**

23 The mediator assigned to this case has the authority of the court to do the following:

24 a. **Conduct a Telephonic Conference**

25 At any time prior to the date set for mediation, the mediator may contact the parties to
26 arrange an informal telephone conference to discuss any issues concerning the mediation. In the
27 case of an inmate plaintiff, the mediator may contact the Deputy Attorney General assigned to
28 this case to arrange an informal telephonic conference among the parties. The telephonic
 conference is not required by the court and will only be scheduled at the mediator's request. The
 telephonic conference is confidential and will not be recorded or reported on the record and no
 transcript will be prepared.

1 **b. Request Additional Information**

2 The mediator may request additional information and/or documents concerning the case
3 at any time prior to or during the mediation.

4 **II. WHO MUST ATTEND THE MEDIATION CONFERENCE**

5 **a. Plaintiff**

6 The Plaintiff is directed to personally appear and participate in the mediation conference.

7 **b. Non-Inmate Individual Defendants**

8 Any person who is a defendant and is not a current or former employee of the Nevada
9 Department of Corrections must also attend the mediation conference in person, unless his or her
10 presence is excused by the Court.

11 **c. Representatives of Defendant Agencies or Other Defendant Entities**

12 Representatives of the Nevada Department of Corrections (“NDOC”) who have the
13 authority to settle this case are required to attend the mediation conference. The Warden,
14 Associate Warden, or other NDOC Administrator with settlement authority at the institution
15 where plaintiff’s claims arose shall be available to be contacted by telephone during the
16 mediation, if requested by the mediator. If the deputy attorney general believes that the presence
17 of a particular Nevada Department of Corrections representative would facilitate mediation, he or
18 she may seek leave of court to direct that such person be present.

19 **d. Attorneys**

20 All attorneys who will be participating in the trial of this case are also required to attend
21 the mediation conference.

22 **e. Excused Attendance**

23 All persons attending the mediation conference are required to be present for the entire
24 conference. Any request to be excused from attending the mediation conference must be made in
25 writing to the Court at least one week prior to the mediation conference. Such requests shall be
26 filed with the Clerk of Court.

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f. Settlement Authority of Persons Attending Mediation Conference

The persons attending the mediation conference must have full authority to settle the case. If the defendant is a governmental agency, private company, corporation, partnership or similar entity, it must be represented at the early mediation conference by a person who has the full authority, subject to any legally required board approval, to settle the case on that defendant's behalf. If a defendant has insurance that may provide coverage for the claims in this case, then a representative of the insurance company with full settlement authority must also be present at the mediation conference.

g. Sanctions for Failure to Attend Mediation Conference

If a party or its attorney fails to have the necessary person(s) with settlement authority physically present during the mediation conference, then the mediator may cancel the mediation conference. The mediator will promptly notify the Court of the reason for the cancellation and the Court may require the party or its attorney to pay the reasonable expenses of the other parties or the mediator caused by the cancellation. The Court may also impose additional sanctions on the party or its attorney if facts and circumstances justify such sanctions.

III. PURPOSE OF THE MEDIATION

The purpose of the early mediation conference is to assist the parties in settling this case without the need for any further court action. The parties and the attorneys should be prepared to explain to the mediator the facts and legal issues involved in the case. The mediator will meet separately and confidentially with each party and his or her attorney to discuss the case and to obtain and present settlement offers or proposals. The discussions and negotiations that occur during the mediation conference are confidential. The judges assigned to this case will not be informed by the mediator or by any party or attorney about what was discussed or what offers were made during the mediation conference. The parties should take full advantage of the settlement opportunity provided by the mediation conference. This requires that each party make a good faith effort to settle the case based on a fair and reasonable view of the facts and the law.

1 **IV. MEET AND CONFER REQUIREMENT**

2 The Deputy Attorney General assigned to this case shall contact the plaintiff by telephone
3 in advance of the mediation to meet and confer about the mediation process and settlement
4 options. The Deputy Attorney General may decide, at his or her own discretion, to share the
5 legal analysis portion of their mediation statement with the inmate.

6 Prior to the mediation, the Deputy Attorney General shall also conduct a meet and confer
7 with the NDOC representative attending the mediation and the State Tort Claims Manager to
8 discuss the allegations of this case. The Deputy Attorney General shall share the defendants'
9 mediation statement with the NDOC Representative and the State Tort Claims Manager at the
10 meet and confer.

11 **V. THE CONFIDENTIAL MEDIATION STATEMENT**

12 Prior to the mediation conference, the plaintiff and defendant will send their confidential
13 mediation statements for the mediator's review. The confidential mediation statement is
14 intended to provide the mediator with necessary information to understand each party's position
15 and to prepare for and properly conduct the mediation conference. The mediator will be better
16 able to assist in settling the case if the parties' mediation statements provide accurate and
17 straightforward information about the facts and legal issues in the case. The mediation statement
18 shall not be sent to the opposing party or his or her attorney. However, the Deputy Attorney
19 General, in his or her own discretion, has leave to share the legal analysis portion of the
20 mediation statement with the inmate. The judges assigned to this case will not see or review the
21 mediation statements. After the mediation has ended, these mediation statements will be
22 shredded to ensure confidentiality.

23 Each party's confidential mediation statement is limited to seven (7) pages and should
24 contain the following information:

25 1. A brief statement about the nature of the case;
26 2. A brief discussion of the key factual and legal issues involved in the case;
27 3. A discussion of the strongest points in your case and a frank discussion of
28 the weakest points in your case as well;

- 1 4. You may also discuss the strongest and weakest points in your opponent's
- 2 case, if this is more than simply stating the opposite of the strongest and
- 3 weakest points in your case;
- 4 5. Describe any settlement offers or discussions that have already taken
- 5 place. Include both the last settlement offer you made, and the last
- 6 settlement offer that was made to you, and by whom it was made if there is
- 7 more than one opposing party;
- 8 6. State the settlement that you believe would be fair to settle this case;
- 9 7. Also state the settlement that you would honestly be willing to accept in
- 10 order to settle this case even if it less favorable to you than the settlement
- 11 you believe is fair; and
- 12 8. You may attach to your statement documents or exhibits which are
- 13 especially relevant to key factual or legal issues.

14 The mediation statement should be in an envelope clearly marked "Confidential, Contains
15 Mediation Statement." The mediation statements must be received by chambers at 400 South
16 Virginia Street, Room 405, Reno, Nevada 89501, no later than **4:00 p.m., TUESDAY,**
17 **JUNE 11, 2019.**

18 **THE CONFIDENTIAL MEDIATION STATEMENT IS FOR THE MEDIATOR
19 ONLY. DO NOT FILE THE CONFIDENTIAL MEDIATION STATEMENT WITH THE
20 DISTRICT COURT CLERK'S OFFICE AND DO NOT SEND A COPY OF IT TO THE
21 OPPOSING PARTY OR HIS/ HER ATTORNEY.**

22 Attached to this Order is a statement that provides advice in preparing for the early
23 mediation conference and a list of "Frequently Asked Questions" about the Inmate Early
24 Mediation Program and how it works.

25 **IT IS SO ORDERED.**

26 DATED: April 4, 2019.

27 *William A. Cole*

28

UNITED STATES MAGISTRATE JUDGE

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2 **EARLY MEDIATION CONFERENCE PREPARATION**

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4 Experience shows that the party who is best prepared usually obtains the best result in
5 settlement negotiations. Mediation conferences are more effective if all parties and their
6 attorneys are prepared. To be effective in presenting your case and settlement position during the
7 mediation, you should consider the following:

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9 **A. INMATE MEDIATION EDUCATIONAL VIDEO**

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11 The court has prepared a brief educational video explaining the inmate
12 mediation process. Please make arrangements to view this video prior to
13 the mediation conference. The video is played on a loop in the common
14 areas and is also available in the law library. If you are not able to view
15 the video in either of these areas, please send a kite to your caseworker
16 requesting to view the video at your cell door.

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18 **B. FORMAT OF MEDIATION CONFERENCE**

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20 The mediator will meet separately and privately with each party to discuss
21 the case and will speak directly with each party, even if the party is
22 represented by an attorney. The mediator will not, however, meet with any
23 party who is represented by an attorney outside the presence of his or her
24 attorney.

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26 **C. ISSUES**

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1. What issues need to be settled? In some cases, this may include the issues
2 that are not part of the claims in the lawsuit, but whose settlement could
3 assist in settling the claims in the case. What are the strengths and
4 weaknesses of your position on each issue? What is your best argument?
2. What remedy or remedies is the plaintiff seeking. Does he or she want an
3 injunction, i.e., a change in conditions of imprisonment, money damages
4 or both. What remedies is each party willing to offer or accept in order to
5 settle this case?
3. Is there any other pending lawsuit or planned lawsuit that affects the
4 settlement of this case?

1 4. Do you have enough information to place a value on the case? If not, how
2 are you going to get more information before the mediation conference?
3 5. Do attorney's fees or other expenses affect settlement? Have you provided
4 this information to the other side?

5 **D. NEGOTIATIONS**

6 1. When did your last settlement discussions end? Are you sure?
7 2. Will discussions with the opposing party before the mediation conference
8 make it more likely that a settlement will be made? If so, the parties are
9 encouraged to contact each other and meet prior to the mediation
10 conference.
11 3. What should be your starting value of your case? Be prepared to explain
12 your assessment to the opposition.
13 4. Think about what a reasonable, realistic settlement would look like. Think
14 about value from the opposition's point of view. Be prepared to discuss
15 different viewpoints.
16 5. Is there confidential information which affects the case value? Why
17 can't/won't/ shouldn't it be disclosed to the other party? How can the other
18 party be persuaded to settle if it doesn't have this information?
19 6. What happens if you don't settle the case at the mediation? What is your
20 best alternative to a negotiated settlement? Why? What might change the
21 outcome of the settlement conference? Pending motions, discovery,
22 expert's report, etc.

23 **E. CLOSING**

24 1. If settlement is reached, there will be a recorded hearing of all parties in
25 the courtroom in which the terms of the settlement will be announced by
26 the mediator and each party will state their agreement to the terms of the
27 settlement.
28 2. Have you considered the form of the settlement agreement?
29 3. How soon can checks/closing documents be received?

1 4. If settlement is not reached, and further discovery is needed, what is your
2 plan for continuing settlement discussions? Do you want court
3 involvement in these talks?

4 5. If settlement is not reached, be prepared to again discuss settlement with
5 the opposing party as the case proceeds and each side gains more
6 understanding about the case and the other side's position.

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2 **Inmate Early Mediation Program**

2 **Frequently Asked Questions**

3 **1. What is the purpose of the inmate early mediation program for Section 1983 cases?**

4 The goal of this program is to refer Section 1983 inmate cases to mediation before the parties
5 begin discovery to determine whether the parties can work together to reach a reasonable
6 resolution to their case.

7 **2. What is mediation?**

8 Mediation is a form of alternative dispute resolution, which courts now use routinely as a tool to
9 settle all types of cases in federal court. Mediation begins with an explanation of the process and
10 the ground rules. All parties are given an opportunity to be heard about the issues in the case.
11 The mediator's role is to help the parties define the issues. Once the issues have been explored,
12 the mediator looks for areas of common interest and helps the parties build options to settle the
13 case.

14 **3. Who are the mediators in this program and what does the mediator do?**

15 The mediator is a neutral party who has no stake in the outcome of the case. The panel of
16 mediators for this program are local lawyers who have received mediation training and who
17 provide their services without any charge to the parties.

18 The mediator's goal is to create an environment in which the parties can honestly discuss the
19 issues that need to be resolved. The mediator does not make decisions for the parties, and
20 instead, works with the parties to reach a settlement of the case.

21 **4. Does the mediator report to the judge what happened in the mediation?**

22 No. Neither the District Judge nor the Magistrate Judge assigned to your case reviews the
23 confidential mediation statements or discusses with the mediator what occurred in the mediation.
24 The only information the court receives is whether the case settled, and the mediator completes a
25 form for the Clerk of Court reporting on the outcome of the mediation to keep statistics on the
26 program.

27 **5. What types of relief are available? What types of relief are not available?**

28 Settlement may or may not include payment of money damages. A settlement gives the parties
29 an opportunity to fashion different types of relief, including non-assessment of the filing fee,
30 restoration of work credits, revision of disciplinary charges, or relief aimed at resolving the
31 specific dispute alleged in the complaint.

1 Early parole, a pardon, commutation of your sentence, sentence reduction, goods from outside
2 vendors, and specific requests for individual items from the canteen are not available forms of
3 relief in mediation.

4 Plaintiffs must understand that each case is unique and the type of relief available will be
5 considered on a case-by-case basis. A compromise agreement is one in which neither party is
6 completely satisfied with the result, but both have given something up and both have obtained
7 something in return.

8 **6. What happens if the parties reach a settlement in the case at the mediation?**

9 If the parties settle the case, the terms of the settlement will be placed on the court record, and the
10 mediator presides over that process. The terms of the settlement are placed on the record, and the
11 parties must state that they understand and agree to each settlement term. The settlement is
12 binding at that time, even though the deputy attorney general will prepare a written settlement
agreement for the parties to sign. Once the parties review and sign the settlement agreement, a
stipulation is submitted to the court to end the case.

13 **7. What happens if the parties don't settle the case?**

14 The mediator will conclude the mediation by stating on the court record that the parties were
15 unable to settle the case that day. If the case does not settle, there is no negative consequence to
16 the parties. Mediation is simply an opportunity for the parties to meet and discuss how they
17 might resolve the case. If there is no settlement, the case will proceed.

18 **8. Why do parties in litigation go to mediation, as opposed to a trial on the merits?**

19 Mediation is informal and the parties have an opportunity to be heard and to hear the opposing
20 party's point of view. Without mediation, parties usually don't speak to one another except
21 through attorneys and legal filings. Mediation also allows the parties who have ongoing
22 relationships to preserve them by having a discussion rather than an adversarial proceeding.

23 Mediation also offers the parties more flexibility to settle their dispute. The parties can explore a
24 variety of ways to resolve the case, and they have control over the outcome.

25 **9. Are there other benefits to mediation, even if the case does not settle?**

26 Early mediation allows the parties the opportunity to speak honestly with one another in an
informal, confidential environment. Even if the case is not settled, the process can be very
27 helpful to the parties in understanding their claims and defenses in the case, what discovery and
28 motions might be necessary, and this may save the parties time and money. Sometimes parties

1 realize that certain claims or defenses can be dismissed, and they are more efficient in litigating
2 the case. In addition, early mediation opens the door for future settlement discussions as the case
3 proceeds. The better informed the parties are about their case, the better prepared they will be in
litigation and in exploring future options for settlement.

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